IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 10931 of 2005

Between:

1. Arumalla Koteswara Reddy S/o.A.Seshi Reddy
   R/o.Telaprolu Village,Unguturu Mandal Krishna District.
2. Avutu Nagireddy s/o Rami Reddy
   R/o.Telaprolu Village,Unguturu Mandal Krishna District.

.. PETITIONERS

AND

1 The Revenue Divisional Officer, Nuzivid Krishna District.
2 Sri Sobhanadri Laxminarasimha Swamy Varla Veda Sastra Pathasala, Agiripalli,
Rep by its Secretary D.Narasimha Rao

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or direction declaring the order of the 1st respondent passed in Inam Petition No.1/2005 in Inam Appeal No. /2005 dt.25.4.2005 as illegal and arbitrary.

Counsel for the Petitioner:MR.O.MANOHER REDDY

Counsel for the Respondent No.1: GP FOR REVENUE

The Court made the following :

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ORDER:

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This writ petition is filed by the petitioners with a prayer to issue a writ of mandamus or any other appropriate writ or direction declaring the order of the 1st respondent passed in Inam Petition No. 1/ 2005 in Inam Appeal No. /2003 dated 25-4-2005 as illegal and arbitrary.

2. The 2nd respondent herein is the appellant in Inam Appeal No. /2003 presented before the Revenue Divisional Officer, Nuzivid. There was a delay in filing the Inam Appeal and therefore, an application under Section 5 of the Limitation Act was moved before the appellate authority to condone the delay of 8 months 17 days. A sworn affidavit has been filed in support of the delay condonation petition. The petitioners herein filed counter before the appellate authority resisting the application filed under Section 5 of the Limitation Act. The appellate authority allowed the delay condonation petition by order dated 25-4-2005. This writ petition has been filed questioning the said order on the ground that the appellate authority has not exercised its jurisdiction properly and thereby the impugned order is liable to be set aside.

3. Heard the learned counsel for the petitioners as well as learned Government Pleader for Revenue appearing on behalf of the 1st respondent and learned counsel appearing on behalf of the 2nd respondent.

4. The relevant portion of the impugned order reads as follows:

"*As per the observation of Honourable High Court the*

appellant now filed this present petition praying this Tribunal to condone the delay in filing appeal. In view of the finding of the Honourable High Court in W.P.No. 4881 of 2004 dated 22-3-2004 this Tribunal is bound to allow this petition and admit the appeal by condoning the delay."

5. The impugned order indicates that the appellate authority has proceeded on the wrong premise that he is bound to condone the delay as per the orders of this Court passed in W.P.No. 4881 of 2004 dated 22-3-2004 irrespective of the reason offered to condone the delay is sufficient or not. The order passed in W.P.No. 4881 of 2004 is to the effect that the application to condone the delay in filing the appeal has to be considered in accordance with law. Whereas, the appellate authority misconstrued the order, as if the Tribunal is bound to allow the petition, despite the appellant not coming forward with reasonable explanation for condoning the delay. Since the appellate authority has misconstrued the orders passed by this Court in W.P.No.2881 of 2004, the impugned order cannot be sustained under law.

6. Accordingly, the order impugned in set aside. The matter remitted back to the appellate authority-1st respondent for passing order afresh on the delay condonation petition after hearing both the parties.

7. With the above direction, this writ petition is disposed of. No order as to costs.

B.Seshasayana Reddy,J

10th June, 2005

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Revenue Divisional Officer, Nuzivid Krishna District.
2 The Secretary D.Narasimha Rao .

Sri Sobhanadri Laxminarasimha Swamy Varla Veda Sastra . Pathasala, Agiripalli,
3. 2 CCs to G.P. for Revenue, High Court Buildings, Hyderabad

(OUT)

4. 2 CD copies

5. 1 CC to MR.RAGHAVA CHARYULU

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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10th June, 2005.